PUBLIC AFFAIRS
ENGAGEMENT

A proposal prepared for PhRMA and IPASA:

Campaign to Prevent Damage to Innovation from the Proposed Draft National IP Policy in South Africa

Stage 1: Jan.-Feb 2014

Introduction

This is a new short-term Stage 1 proposal, based on our more comprehensive proposal of last month. This proposal is for work from Jan. 13, 2014, through Feb. 15, 2014. It comprises work we at PAE can do on our own, prior to the engagement of a South African partner. Stage 2 will complete the original proposal, extending from Feb. 15 through approximately June 15, 2014. A prospective Stage 3, if you approve, would begin after that date.

Background

On September 4, after years of discussion, the Department of Trade and Industry (DTI) of the Republic of South Africa issued a draft National Policy on Intellectual Property and opened it to public comment.

The draft, which sets the stage for legislative action, runs 44 pages and covers a wide range of Intellectual Property (IP) policies, in areas such as software, pharmaceuticals, agriculture, and even sporting events. The draft intends for IP policy to be comprehensive, embedded in trade, taxation, development, and general regulatory activities of the government.

The next steps for the draft will include a possible White Paper or various draft bills to be presented to the applicable Portfolio Committee(s) (Trade and Industry; Health; Science and Technology). A joint IP committee constituting members of all the various Portfolio Committees is also possible given the multi-departmental reach of the recommendations in the policy document. Then the Portfolio Committee(s) will conduct their own public consultation and vote whether to send the draft bill to the Cabinet and to Parliament for ratification. Following a vote by the full seating of the National Assembly, the various Bills and/or amended legislation would be sent to the President for signature. The process can take anywhere from six months to two years. An alternative scenario is for the DTI to keep the policy as a framework or guideline for future consultation. In that case, the Portfolio Committee presentation would probably take place in February or March 2014.

South Africa is scheduled to hold its fifth national election on a date that has yet been announced but will fall between April and July 2014 – most likely in April or May. The National Assembly, after the election, will choose the president. It is possible, then, that a new IP policy could become law before the election.

The IP draft is written in vague language, but there is no doubting its intent. It justifies a weak IP regime that allows the government to abridge intellectual property rights that are well established in the developed world. The health section of the draft takes dead aim at innovative pharmaceutical companies and the strategic Life Sciences sector in general. It approves of "compulsory licensing" – that is, allowing someone else to produce a patented product without the consent of the owner – and states ominously that IP protections "must not contradict public health policies."

Not surprisingly, the draft IP policy won praise from the coalition that was formed to pressure the government into producing it in the first place, including Médecins San

Frontières (MSF, or Doctors Without Borders), the Treatment Action Campaign, and Section 27.

If the principles in the draft are adopted, not only will South Africa become less hospitable to the Life Sciences sector, it may also provide the model for other developing nations, inside and outside Africa, including such important aspiring economies such as India and Brazil.

South Africa is now ground zero for the debate on the value of strong IP protection. If the battle is lost here, the effects will resonate. Clearly, MSF and similar NGOs understand that. A robust public affairs program is necessary to create the environment for a sensible IP policy to be adopted by the Cabinet and implemented through legislative processes. This program is meant to support – and lead – direct lobbying efforts. Without a vigorous campaign, opponents of strong IP will prevail – not just in South Africa but eventually in much of the rest of the developing world.

Proposed IP Policy Hurts the South Africa Economy

The most effective campaign focuses on the importance of IP to the South African economy, to the availability of the most innovative medicines and therapies to South African patients, and thus to the general welfare of the country as a whole.

Strong IP encourages capital investment; capital investment produces economic growth and prosperity; economic growth and prosperity are the essentials of good health. In no instance is a poor country a healthy country. South Africa ranks fourth in HIV/AIDS infections in Africa on a proportional basis and second in TB infections. Patent protections are not the reason; substandard public health policy, an inadequate delivery system, and poverty are.

Our criticism of the IP draft is that it will discourage capital investment in South Africa – not just by drug companies but by software, arts, chemical, agriculture, manufacturing, and services firms. Our vision is that South Africa has the capacity to be one of the world's economic leaders over the next several decades. It can move from emerging status to become another Chile or even South Korea, and, to achieve that goal, it must attract – not drive away – capital investment.

South Africa has substantial human capital, but human capital will wither if it is not deployed in fields such as engineering, pharmaceuticals, and telecommunications. Those fields require financial capital.

The case is not difficult to make. South Africa's economy has been disappointing when compared with other large developing nations. A recent International Monetary Fund report on South Africa "could scarcely be more damning," according to a blog on the website of The Economist. The report cites sluggish growth, which has exacerbated inequality and other vulnerabilities, and it paints "a portrait of a country that increasingly relies on foreign creditors to plug the holes in its finances yet does little to ensure that this much-needed investment will keep flowing."

South Africa has lately been struggling to bring in foreign direct investment (FDI). There is little doubt that if the recommendations in the draft IP policy is adopted, it will be even more difficult to attract FDI.

Immediate Mission

Delay the finalization of the IP policy by the Cabinet followed by the passage of IP legislation through Parliament until after the 2014 election. Delay will provide time to develop a third stage of the campaign: establishing a strong, comprehensive IP policy and, at the same time, a new strategic approach to health care policy in South Africa, supported by VISION 2025.

Strategy and Message

Mobilize voices inside and outside South Africa to send the message that the proposed IP policy threatens continued investment and thus economic and social well-being. This mobilization will occur through an energetic campaign, which will feel like a political campaign.

The message is: A comprehensive IP policy is needed, but if South Africa rushes into the policy offered by the Department of Trade and Industry, it will be doing great damage to the country and helping competitors such as Nigeria. Moreover, patents do not impede access to medicines; industry stands ready to be a partner with South Africa in finding sustainable healthcare solutions. It is now time for cool heads to prevail. Slow down and devise a better policy.

Outline of the Comprehensive Campaign (Stage 1 plus Stage 2):
We Will...

1. Immediately start and direct a Stage 1 and 2 campaign, geared to end around the time of the election. We will begin by managing a coalition of existing organizations such as the South African Institute of Race Relations, the Free Market Foundation, the Initiative for Global Development (Amb. Mark Green), business groups, the Innovation Hub, and academics with the aim of creating a new alliance with a name such as Forward South Africa (FSA) by March.

   The campaign's goal is to delay the national IP draft proposal with the eventual aim of modifying it to protect IP so that South Africa can become more competitive on the global stage for investment. The coalition – which will be broad– will be the public face and spearhead of a movement to make South Africa more attractive to foreign investment.

   FSA will be seen as a *positive* force. It will be directed by staff from Public Affairs Engagement and PAE's South African partner and will include academics and representatives of other business sectors. It will be led by a visible South African, most likely a respected former government official, business leader or academic. In addition, FSA will seek allies within the ANC and the Government of South Africa, especially experts in science and technology.

South Africa legislators and officials need to be reminded, again and again, that there will be a high price to pay for a weakened IP regime – in terms of reduced FDI and thus a slower-growing economy (and, tacitly, a price politicians themselves will pay at the polls). And the problem is not simply FDI. Without strong IP, home-grown South African innovation will stall.

2. Make the intellectual connection between wealth and health – and the critical role of strong IP in encouraging wealth – in an academic paper commissioned by independent institutions and funded by FSA. Emphasize this point through events and op-eds. Link to the BIO conference in June (see below).

3. Mobilize free-market-oriented African officials and policy experts to advocate pan-African economic reform in IP – thereby threatening South Africa with a loss of a leadership role if it adopts the draft policy as is. In other words, create a counter-movement. This African element of the plan is delicate. We want to build solidarity with pro-free-market governments such as Rwanda and Tanzania, but we also want to emphasize the competitive disadvantage that will develop for South Africa vis a vis Nigeria if a weak IP policy is adopted.

4. Push back against MSF and other NGOs as appropriate, to be determined in consultation with IPASA and PhRMA. Repudiate their claims, but be conscious that we do NOT want a debate over individual drug prices to become the focal point of the campaign. Lies and distortions should not go unattended, but the primary objective should be to set the NGOs back on their heels – to distract them from their own aggressive campaign.

   The main argument against the NGOs is that South Africa's health problems are the result, not of lack of drug access, but of poor health infrastructure, improper management, and, ultimately, poverty. South Africa's record in fighting HIV/AIDS and tuberculosis is poor, and the reasons have nothing to do with patented drugs. For example, South Africa is also one of only twelve countries in which mortality rates for children younger than five-years have increased since 1990.

5. Amplify the voices of development experts, especially Africans, who worry about the fate of South Africa if it moves in the direction advocated in the IP draft. Make it clear that FSA and its followers have the deepest compassion for the plight of poor and unhealthy South Africans, which is why we oppose the weakened IP regime.

6. Develop pressure from *outside* South Africa. FSA, or its surrogates, will hold public conferences in Europe and Asia, bringing together industry, academic, and financial leaders to express concern about the direction in which South Africa is headed. South African political leaders will have to pay attention when, for instance, the Emerging Markets Trade Association (whose members include large investors in South Africa) holds a panel in London that warns about South Africa's IP folly. Stress Europe-South Africa link.

7. Elevate the status and visibility of IPASA through providing Internet and blog content, appearances at conferences described below, general public relations support.

Timeline for Stage 1 (Jan. 13-Feb. 15): We Will...

- Write explicit six-month Stage 1 and 2 plan to be delivered no later than 5 business days from acceptance of the agreement.
- Develop a precise schematic timeline of decision points in the process moving from the draft proposal to law.
- Plan engagement with key stakeholders and decision makers, including policy makers, academics, and media by developing a map of the relationships among these individuals, with indicators of importance.
- Begin working on launch of Forward South Africa (set for March); identify chair, board members, coalition members – patient groups, academics, business organizations, etc.
- Begin earned media campaign. We will place at least two mainstream op-eds and at least two other op-eds or highly visible blogs over the one-month period.
- Commission paper by Institute for Race Relations on effects of weakening IP protections in South Africa (IRR will be responsible for launch of paper and follow-up events).
- Commission paper by Emerging Markets Forum, authored by South African and foreign economists, on general policy prescriptions for South Africa to attract greater foreign capital investment, with emphasis on IP.
- Partner with the European Centre for International Political Economy (ECIPE), a Brussels-based trade and economic policy research organization, and the South African Institute of International Affairs, to co-author a white paper that would address how strong IP laws in South Africa are mutually beneficial for both the EU and South Africa's long-term economic prospects by increasing trade and investment.
- Plan panel discussion in Cape Town with HIV/AIDS experts (PAE will use PEPFAR and George W. Bush Presidential Center connections) on importance of IP protections to development of AIDS and other drugs.
- Plan series of breakfasts, lunches, salon dinners, to highlight wealth and health nexus, launching mid- or late-February.

Directives

- PAE will consult with PhRMA and IPASA prior to any direct outreach to outside individuals or organizations. This will ensure that PAE is fully informed of relevant existing relationships, sensitivities, and background before moving forward on behalf of PhRMA and IPASA.
- PAE will consult with PhRMA and IPASA regarding any event scheduling to ensure that selected dates are best suited for organizational and political calendars, particularly if Government officials will be invited/encouraged to attend.
- PAE will ensure that PhRMA and IPASA have sufficient opportunity to review and comment on any and all research, op-eds, blog posts, and other material prepared

by outside individuals or organizations and intended for publication. PhRMA and IPASA recognize the importance of independent research and the value of independent thinking in creating broad support for innovation in South Africa, but it is critical that sponsored published materials do not undermine the objectives of this campaign.

Resources

Public Affairs Engagement, LLC, (PAE) is a flexible, robust organization that is built around a core of highly regarded specialists. For international work, it draws on the experience of its chairman, Ambassador Glassman. PAE was founded in December 2012 and is based in Arlington, Virginia, a suburb of Washington, DC. Its clients include one of the largest American retailers, one of the largest energy suppliers, and a large coalition headed by one of the most important technology companies in the world.

For staffing the South Africa effort, PAE will engage a public affairs specialist with health policy experience. PAE will assign a full-time public affairs specialist from Washington or Brussels to Johannesburg to handle coordination and execution of the project. In addition, Ambassador Glassman and other DC-based PAE executives will spend time in South Africa.

A key part of our strategy is applying pressure from outside South Africa, and PAE is well-staffed in Europe.

Our strong suit is imagination, speed, and execution. PAE staff has extensive experience in just the kind of work we propose in South Africa. For example, we helped a major pharmaceutical company reverse traditional European attitudes against dissemination of information about prescription drugs. For another client, we pushed back against the attempts of a major South American country to renegotiate the price of a key drug. (We are happy to provide more details privately.)

Below are short biographies of key staff on this account:

Ambassador James K. Glassman
Team leader

Jim is chairman and CEO of PAE. He has extensive experience and wide respect in three areas: media, business, and government. (He has worked on pharmaceutical issues, on and off, for the past 13 years, including meeting privately with officials on HIV/AIDS issues.) He holds the lifetime rank of ambassador. He is a visiting fellow at the American Enterprise Institute, one of the top think tanks in Washington, where he previously served as a fellow or senior fellow for 11 years.

On Aug. 31, 2013, he completed four years as founding executive director of the George W. Bush Institute, building the policy innovation arm of President Bush's library and museum complex in Dallas. Jim's work for the Bush Institute included setting up a large public-private effort in Africa to fight cervical cancer.

Prior to that, Jim served as Under Secretary of State for Public Diplomacy and Public Affairs, leading the U.S. Government's international strategic communications effort. Among his accomplishments at the State Department was bringing new Internet technology to bear on outreach efforts. He was confirmed unanimously by the U.S. Senate.

He also served as chairman of the U.S. Broadcasting Board of Governors, which directs all non-military, taxpayer-funded international broadcasting, including Voice of America, Radio Free Europe, and Alhurra TV.

He has been moderator of three weekly television programs: Ideas in Action and TechnoPolitics on PBS and Capital Gang Sunday on CNN. And he was a respected publishing executive, serving as publisher of the New Republic, president of the Atlantic Monthly, executive vice president of U.S. News & World Report, and editor of Roll Call. He was a columnist for the Washington Post for 11 years and has written three books on finance. His articles appear regularly in the Wall Street Journal, the New York Times, and elsewhere.

In April 2012, he was appointed to the Investor Advisory Committee of the U.S. Securities and Exchange Commission. He was formerly a member of the Policy Advisory Board of Intel Corporation and a senior advisor to AT&T and SAP America.

He holds a B.A., cum laude, from Harvard University, where he was managing editor of the daily newspaper, The Crimson.

William Oliver

Bill Oliver recently retired after 19 years as an executive with AT&T, most recently as senior vice president for public affairs. He is now a senior advisor for PAE. He began his career in Washington as administrative assistant to a senior member of the U.S. House of Representatives, then became director of manpower and reserve affairs for the Department of Defense.

He moved to the private sector to create a public affairs organization for PACCAR Inc., the large trucking manufacturer. He became vice president of global communication for Weyerhaeuser, the forest products company, and then vice president, communications, at TRW Inc., a global aerospace and automotive component manufacturer.

Bill joined AT&T as vice president, corporate public relations in 1994. He later assumed responsibility for international public relations, and then became the head of PR for AT&T's Consumer Services Organization.

Bill is a graduate of Kent State University, having received his B.A. in journalism in 1964 and his M.A. in political science in 1967.

Beneva Schulte

Beneva Schulte is a senior vice president for PAE, with extensive experience in public affairs. Before joining PAE, she ran her own consulting firm and provided communications strategy for a variety of diverse clients, serving as a strategic communications advisor and spokesperson for FM Policy Focus, a coalition of seven associations of financial services companies actively engaged in the mortgage industry.

Beneva was the chief deputy director for the Financial Crisis Inquiry Commission (FCIC) and a political editor for National Public Radio's daily news magazine, Tell Me More with Michel Martin. She served as communications director on the Chris Dodd for President Campaign and as chief of staff to Rep. Carolyn McCarthy.

She received her B.A. in English from Florida International University and her M.A. in public policy from George Washington University.

Elizabeth Heaton

Elizabeth Heaton is a senior director for PAE. She has more than 10 years of experience in media relations and public affairs. In her current position, Ms. Heaton oversees media strategy and public affairs implementation on a wide range of campaigns.

Prior to this, Elizabeth worked for the DCI Group, the nation's fourth largest independent communications consulting and public affairs firm. She also worked at the Electric Power Supply Association, a national trade association serving competitive power suppliers active in U.S. and global power markets; the U.S. Department of Justice, where she worked as a senior advisor in the Office of Justice Programs; and the National Cable & Telecommunications Association, the principal trade association of the cable industry in the United States. Ms. Heaton began her professional career working at the White House in 2003. Her political experience also includes work with various political campaigns around the country.

Originally from Grand Rapids, she is a graduate from the University of Michigan, where she received her B.A. in political science. She and her husband, Dave, live in Columbia, South Carolina.

Conclusion

Our proposed campaign to strengthen IP in South Africa makes two major points: first, the key to good health is increased prosperity through such measures as strong IP, and, second, the world cares that South Africa is proposing to take a wrong turn in economic policy by weakening IP protections. And by "cares," we mean both expresses compassionate concern and will take action by reducing investment.

South Africa, as a member of the G20 and as the moral leader of the continent, needs to take a leadership role in economic growth among developing countries. Instead, it threatens to become a leader of a different sort. If the IP draft approach prevails in South Africa, we can expect other developing countries to follow. That is why the contest here is so critical (even to businesses that do not currently operate in South Africa) – and why a robust campaign is absolutely necessary.